

February 21, 2012

Michael P. Rives  
1114 W. Avenue J9  
Lancaster, CA 93534

Re: Your Request for Advice  
**Our File No. I-12-005**

Dear Mr. Rives:

This letter responds to your request for advice regarding campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because we do not have sufficient information to offer formal written advice, we provide you with informal assistance.<sup>2</sup>

Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of the fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTION

1. As candidate for city council, what are my reporting obligations regarding a disputed expense?
2. May a non-monetary contribution be returned?

### CONCLUSION

1. The Commission does not opine on disputes regarding contract provisions. We provide you an overview of possible reporting obligations you may have under your circumstances.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not confer the immunity provided by a Commission opinion or formal written advice. (Regulation 18329(c)(3).)

2. It is permissible to return a non-monetary contribution.

### **FACTS**

You worked for Maggie Campbell's campaign for Mayor of Palmdale in 2011. After the election, Maggie Campbell's campaign gave your campaign for Lancaster City Council a non-monetary contribution in the form of supplies. You then entered into a contractual agreement with Maggie Campbell's business, ACF & Associates, to fundraise for your city council campaign.

The contract stated that ACF & Associates would establish a fundraising plan for your committee and contact potential contributors. According to the contract, ACF & Associates would receive 20 percent of all contributions donated to your campaign. You and ACF & Associates subsequently terminated your contract, and ACF & Associates sent you a letter stating the value of the non-monetary contribution from Maggie Campbell's campaign was \$100, and charged \$2,000 for the services performed by ACF & Associates prior to the termination of the contract. You state that you did not request the services from ACF & Associates for which you were billed and that those services were not part of the contract. You plan to return the unused paint that was provided.

You confirmed in our phone conversation on January 27, 2012 that you filed a Form 501 "Candidate Intention Statement" in the summer of 2011 and contributed or loaned \$100 to your campaign. You also confirmed in our telephone conversation that you do not have an open committee and filed the Form 470 and, therefore, do not plan to raise or spend over \$1,000 or open a committee for your campaign.

### **ANALYSIS**

#### **Question 1**

With respect to the dispute over the contract provisions, the Commission does not opine on disputes regarding contract provisions. We will provide campaign reporting guidance.

The term "expenditure" is defined as a payment made for "political purposes." (Section 82025.) "Political purpose" means that the payment<sup>3</sup> was made for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure. (Regulations 18215(a)(1) and 18225(a)(1). "An expenditure is made on the date the payment is made or on the date consideration, if any, is received." (Section 82025.)

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<sup>3</sup> Section 82044 defines payment, in part, as any "rendering of . . . services or anything else of value, whether tangible or intangible."

The reporting requirements depend on the facts of the situation. If the itemized expenses (excluding the wood/paint which will be returned) were volunteer services or were not used, you are not required under the Political Reform Act to report the payment and, as long as your campaign does not raise or spend \$1,000 in a calendar year, you will not have to form a committee. Please note that candidates that do not reach the \$1,000 threshold must file a Form 470 for each calendar year. If you filed the Form 470 in 2011, that form covered the reporting period from January through December of 2011. Another Form 470 will be required for the calendar year 2012 and may be filed any time before the deadline outlined on the campaign filing schedule for your 2012 election.

Your reporting requirements may change if some of the services were used, even for a short period of time. When services are provided without reimbursement, they are considered non-monetary contributions. If you used some of the services and the value of those services is over \$1,000, you must file a Form 470 Supplement if you have filed the Form 470 for calendar year 2012. Additionally, you will need to file a Form 410 "Statement of Organization" to form a committee. The date of qualification for your committee should be the date you received services from ACF & Associates that totaled \$1,000 or more in value. The services received from ACF & Associates should be reported as a non-monetary contribution on the Form 460, Schedule C.

## **Question 2**

The Act does not prohibit a return of a non-monetary contribution such as the unused paint.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Ivy Branaman  
Political Reform Consultant

IB:jgl